January 12, 2011

Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

RE: Notice of Oral *Ex Parte* Communication
Docket 10-56
Comcast/NBCU Transaction

Dear Ms. Dortch:

This notice is submitted in compliance with Section 1.1206(b) of the Commission's Rules.

On January 11, 2011, the following individuals met with Chairman Genachowski, Chief Counsel and Senior Legal Advisor Rick Kaplan and Senior Counsel for Transactions John Flynn: Gigi Sohn and Harold Feld of Public Knowledge, Corie Wright and Joel Kelsey of Free Press, Mark Cooper of Consumer Federation of America, Andrew Jay Schwartzman of Media Access Project, Parul Desai of Consumers Union, and Elizabeth Andrews on behalf of Writers Guild of America West. Chief of Staff Edward Lazarus briefly joined the meeting near its conclusion.

At the outset of the meeting, the participants expressed their preference that the Commission dismiss the applications for transfer and assignment of NBC Universal licenses. They stated that they recognize that it appears that the Commission is considering adoption of an order which would nonetheless approve the transactions, and therefore were prepared to discuss conditions which might remediate at least some of the harm to the public interest which would follow approval of the applications.

The participants expressed concern over the lack of transparency in the Commision's administration of this proceeding. They stated a preference for the Commission to solicit public comment on proposed conditions and at the continuing inaction with respect to calls for submission of programming contracts responsive to Request Number 44 of the staff's May 21, 2010 information request.

Stressing that the absence of access to the proposed conditions makes it very difficult to discuss details, the parties raised several areas where they felt strong conditions are required. First, they discussed the importance of protecting an promoting competition in video programming markets by assuring that Comcast's competitors have access to Comcast/NBCU programming, as well as the to the programming of other content providers which may have distribution deals with Comcast. This concern extends to program carriage issues as well. They argued that online video distributors and traditional MVPD's should be afforded similar treatment in conditions because "a competitor is a competitor" regardless of the means of distribution. The fact that online video distribution markets are nascent justifies more, rather than less, attention to protecting them. It is not enough to provide that Comcast may not withhold programming from competitors, as there are many ways to dis-advantage competitors having nominal access to programming, such as insisting on "windows" of exclusivity. They expressed particular concern about tying arrangements, including use of mechanisms like Comcast's Xfinity product to leverage power vis à vis competitors. The participants explained that they are constrained by the lack of access to program contracts, but available data indicates that Comcast regularly forces programmers to restrict availability of their programming to MVPD competitors.

The participants next expressed their strong desire for a requirement that Comcast offer a wholesale broadband service throughout its service area. They noted that Comcast currently has such an arrangement, albeit on a very limit small portion of its footprint, and that it has proven to be quite workable. They also referred to the success of an analogous requirement in the AOL/Time Warner consent decree some years ago. They explained that a wholesale broadband offering gives expanded competitive offerings to consumers and would promote content diversity since it would preclude Comcast from favoring its own content.

With respect to the duration of any conditions, the parties reiterated that any provisions should be co-terminus with the next license renewal term for the NBC and Telemundo television stations. This would provide a mechanism for parties to raise issues with respect to compliance with the terms of any order, and give Comcast an incentive to comply rigorously.

The participants also discussed the need for strong and ongoing enforcement provisions in any order approving the proposed transaction. They argued that without means of filing and prosecuting complaints, there is little incentive for compliance with the Commission's conditions. Expedited complaint procedures should be implemented, including a "deemed granted" or "deemed denied" provision. There should also be strong provisions providing a mechanism to monitor and prosecute instances of retaliation. This has been a particular problem with respect to independent programmers.

There was also brief discussion of It was pointed out that NBC has been allowed to retain one of its Los Angeles TV stations, KHWY-TV, for eight years beyond the date on which it should have been divested, and that any order should be constructed so as to avoid such problems in the future. In this regard, the participants reiterated that the proposed divestiture trust, even as modified, is insufficient, and that the Commission should require that divestiture be mandatory regardless of any change in Commission rules.

Respectfully submitted,

Andrew Jay Schwartzman
Senior Vice President and Policy Director

cc. Chairman Genachowski
Edward Lazarus
Rick Kaplan
John Flynn